

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re: MATTHEW MARK HIGGINS,
AMY BETH HIGGINS,

Bankruptcy Case No.: **03-45290 RJK**
Chapter 7

Debtors.

CHARLES W. RIES, TRUSTEE,

Plaintiff,

v.

ROCHESTER MOTOR COMPANY,
dba ROCHESTER FORD, and
AFFINITY PLUS FEDERAL CREDIT
UNION,

Adversary Case No.: **04-4033 RJK**

Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR JUDGMENT

The above matter came before the Court on Defendant Affinity Plus Federal Credit Union's motion for summary judgment. Appearances were as noted upon the record. Based upon all the files, records and pleadings herein, and the Court being fully advised in the premises, the Court makes the following:

FINDINGS OF FACT

1. Defendant Affinity Plus Federal Credit Union is not a creditor in the Debtor's bankruptcy.
2. On August 4, 2003, thirty days before filing bankruptcy, Debtor Matthew Mark Higgins entered into a contract to trade the 2001 Mazda 626 for \$7,250.00, the note for which was

held by Defendant Affinity Plus Federal Credit Union and co-signed by both Matthew Mark Higgins and Randy A. Higgins, and together with Debtor Amy Beth Higgins co-signed the note held by Rochester Ford for the financing and purchase of a 2003 Ford Escort ZX2.

3. In the terms of the contract, as is standard business practice, Rochester Ford agreed to advance payment to Defendant Affinity Plus Federal Credit Union in the full amount owing by Debtor Matthew Mark Higgins and non-filing co-signor Randy A. Higgins for release of the lien on the 2001 Mazda 626.
4. On August 12, 2003, shortly after the trade, Defendant Affinity Plus Federal Credit Union received a check from Rochester Ford-Toyota in the sum of \$16,669.00, pursuant to and in execution of the terms of the trade, for payment in full of the debt owed by Matthew and Randy Higgins and release of its lien on the 2001 Mazda 626.
5. On August 12, 2003, Defendant Affinity Plus Federal Credit Union posted the monies to the account of Matthew Mark Higgins and Randy A. Higgins, and released its lien on the 2001 Mazda 626.
6. On September 3, 2003, Debtors Matthew Mark Higgins and Amy Beth Higgins filed for joint chapter 7 bankruptcy relief, listing an exemption for the 2003 Ford Escort on their Schedule C, pursuant to 11 U.S.C. §522(d)(2), and also, in their Statement of Financial Affairs, stating their intent to surrender the vehicle.
7. Plaintiff/Trustee did not object to the Debtors exemption of the 2003 Ford Escort.
8. On May 4, 2004, Plaintiff filed its Complaint against both Defendant Rochester Motor Company, dba Rochester Ford and Defendant Affinity Plus Federal Credit Union seeking:

determination that an alleged transfer of \$4,000.00 constitutes both a transfer in interest of property of the Debtors and a preference; avoidance of the alleged transfer as preferential; an award of judgment against Defendants for \$4,000.00; an award of attorneys fees¹, costs and disbursements; and other relief as is just and proper.

9. On May 19, 2004, Defendant Affinity Plus Federal Credit Union filed and served its Answer to Plaintiff's Complaint in this matter.
10. On June 4, 2004, Defendant Rochester Motor Company, dba Rochester Ford filed its Answer to Plaintiff's Complaint in this matter.
11. On June 25, 2004, Defendant Affinity Plus Federal Credit Union served its Request for Admissions, Interrogatories, and Requests for Production of Documents upon Plaintiff.
12. On June 29, 2004, Defendant Affinity Plus Federal Credit Union filed and served Notice of Additional Defense specifically and affirmatively pleading the earmarking doctrine in its defense against the Plaintiff's claims.
13. On June 30, 2004, Defendant Affinity Plus Federal Credit Union received Trustee's Interrogatories to Defendants and Requests for Production of Documents to Defendants.
14. On July 23, 2004, Defendant Affinity Plus Federal Credit Union served its Response to Trustee's Interrogatories to Defendant and Requests for Production of Documents.

¹ Plaintiff has since withdrawn his claim for fees.

CONCLUSIONS OF LAW

1. Plaintiff has not met his burden under 11 U.S.C. 547(b).
2. Plaintiff has not established that a transfer of \$4,000.00 from Debtors to Defendant Affinity Plus Federal Credit Union transpired.
3. Defendant Affinity Plus Federal Credit Union stipulates that it received a check in the sum of \$16,669.00 from Rochester Ford-Toyota to satisfy its lien against the 2001 Mazda 626 and release Debtor Matthew Higgins and non-filing co-signor Randy Higgins from their obligation regarding the vehicle, thereby permitting its use for a trade-in for the purchase and financing of the 2003 Ford Escort ZX2 pursuant to the contract between Rochester Ford-Toyota and Debtors Matthew and Amy Higgins.
4. Plaintiff cannot meet his burden pursuant to 11 U.S.C. 547(b)(3) to establish the Debtors' insolvency at the time of the transfer of \$16,669.00 from Rochester Ford-Toyota to Defendant Affinity Plus Federal Credit Union.
5. Plaintiff cannot meet his burden pursuant to 11 U.S.C. 547(b)(5) to establish that said transfer enabled Defendant Affinity Plus Federal Credit Union to receive more than it would have received if the case were under chapter 7 of this title.
6. Debtors exercised no control over the disposition of the funds transferred from Rochester Ford-Toyota to Affinity Plus Federal Credit Union.
7. In their transaction with Rochester Ford, Debtors exchanged "like-for-like" debt and "like-for-like" assets, and the trade did not impact their prior debt-to-asset ratio or otherwise result in any diminution of the Debtors' estate.

8. The structure of duties and rights, debts and assets, did not change due to the transaction, and both Rochester Ford-Toyota, the new creditor, and Affinity Plus Federal Credit Union, the old creditor, would have enjoyed the same priority status within the Bankruptcy Code.
9. The facts of the present case meet the specific criteria set forth in *In re Bohlen Enterprises, Ltd.*, 859 F.2d 561, 565, 18 Bankr. Ct. Dec. (CRR) 672, 19 Collier Bankr. Cas. 2d (MB) 986 (8th Cir. 1988), and application by Defendant Affinity Plus Federal Credit Union of the earmark doctrine in its defense against the Plaintiff's claims in this action is appropriate.
10. In the present case, no genuine issues of material fact exist between Plaintiff and Defendant Affinity Plus Federal Credit Union.

ORDER FOR JUDGMENT

1. Summary Judgment in favor of Defendant Affinity Plus Federal Credit Union and against Plaintiff is **GRANTED**.
2. Defendant is awarded \$ _____ as and for its attorney's fees.

Dennis D. O'Brien
Judge of Bankruptcy Court